

SECTION 504

Primer for Parents, Educators and Administrators

January 2001

**Section 504
Another Service Option
for Children with
Disabilities**

Overview

The purpose of this primer is to give a practical overview of Section 504 for parents, educators, and administrators. The materials should assist educators in implementing Section 504 requirements, including the development of Section 504 accommodation plans for eligible children.

Section 504 is a federal statute that prohibits discrimination based upon a disability.

Obligations for school districts start when federal funds are received.

Section 504 covers eligible children, employees, and other individuals with disabilities for reasonable accommodations that enable them to work or learn. A team knowledgeable of the person determines, with evaluation data, if the individual meets eligibility criteria. The following is the definition of a disability under Section 504. **This primer addresses subparts D and E of the regulations, which applies to preschool, elementary, secondary and post-secondary programs that receive federal money.**

A CHILD MAY BE CONSIDERED DISABLED UNDER THE DEFINITION OF SECTION 504 IF THE CHILD:

1. *has a mental or physical impairment which substantially limits one or more of such person's major life activities.*

“Major life activities” include functions such as:

- caring for one's self
- walking
- seeing
- speaking
- learning
- performing manual tasks
- working
- hearing
- breathing

The above criteria needs to be justified with good evaluation data.

When a disability does not substantially limit a major life activity, the child does not qualify for services under Section 504.

2. *has a record of such an impairment; or*
3. *is regarded as having such an impairment.*

The second and third prongs of the definition only become a factor if discrimination has occurred because of the “record” or “perception.” Only #1 is used to determine eligibility for Section 504 services.

NOTE: Many children have impairments that **do not** substantially limit a major life activity that impacts their education.

AN EDUCATOR'S PRIMER

PROCESS FOR DETERMINING SERVICES

The Section 504 coordinator should ensure that the following process has occurred:

PRE-REFERRAL

1. If a child experiences educational difficulties, a team meets to discuss the concerns.
2. The team suggests intervention strategies to help correct the difficulties. The primary function of the pre-referral team is to offer assistance to teachers.
3. If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504, special education, Title 1, or other school programs.

REFERRAL

4. Referrals are accepted from parents, professional staff, and/or community agencies.
5. The problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

NOTIFICATION

6. The school notifies the parents or guardians, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

WRITTEN CONSENT

7. Even though Section 504 does not require written consent before the initial evaluation, consent should always be considered a best practice.

EVALUATION

8. The school evaluates all children with disabilities before making an initial placement or any subsequent, significant change in their placement.

ELIGIBILITY

9. A recommended strategy is to use the pre-referral team as the Section 504 team. The team meets and analyzes the evaluation data to determine if the individual has a mental or physical impairment which substantially impairs a major life activity and is in need of accommodations and/or modifications.

WRITTEN CONSENT

10. Even though Section 504 does not require written consent before the initial service, consent should always be considered a best practice.

SERVICES

11. Services are designed to meet the unique needs of the child. School staff are familiar with their responsibilities in implementing the Section 504 plan.

IMPLEMENTATION

12. The school staff makes the necessary accommodations to allow for the child's special learning needs. Parents should be consulted and given opportunity for input regarding the accommodations.
13. The accommodations and/or services are implemented.

REVIEW

14. Each child's accommodations and/or services are reviewed periodically.

- BEST PRACTICE -

The team should review the accommodation plan at least annually.

COMPARISON

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
TYPE	A Civil Rights Law	An Education Act	A Civil Rights Law
TITLE	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Act (IDEA) Amendments of 1997	Americans With Disabilities Act of 1990 (ADA)
PURPOSE	Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education.	Is a federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
RESPONSIBILITY	General education, but shared with special education.	Special education, but shared with general education.	Public and private schools, business establishments and public buildings. (services)
FUNDING	State and local responsibility (no federal funding)	State, local, and federal. IDEA funds cannot be used to serve students eligible only under Section 504	Public and private responsibility (no federal funding)
ADMINISTRATOR	Section 504 coordinator (Systems with 15 plus employees) to coordinate efforts to comply with this law.	Special education director or designee	ADA Coordinator is required to coordinate efforts to comply with this law.
SERVICE TOOL	Accommodations and/or services	Individualized Education Program (IEP). Some IEP's will include Section 504 accommodations necessary for success in the general classroom.	Reasonable accommodations and legal employment practices

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
POPULATION	Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities; i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others.	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as disabled by others.
ELIGIBILITY	A child is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity, or is regarded as disabled by others. The child is not required to need special education services to be protected.	A child is only eligible to receive special education and related services if the multidisciplinary team determines that the student has a disability under one of the thirteen qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.
FREE APPROPRIATE PUBLIC EDUCATION	A child could receive special education services and/or related services and/or accommodations.	A child must first be eligible and need special education before they are entitled to a related service.	Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
ACCESSIBILITY	Federal regulations regarding building and program accessibility requires that reasonable accommodations to be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
UNDUE HARDSHIP	Consideration is given for the size of the program, extent of accommodation, and cost relative to the total school budget.	Budget and administrative convenience is never an excuse.	Consideration is given to the size of the business and its budget, type of operation, nature and cost of accommodation.
DRUG AND ALCOHOL USE	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be eligible for accommodations.	Drug and alcohol use is not covered under special education.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability.
CONTAGIOUS DISEASES	Individual with disabilities excludes any individual with a contagious disease that renders the individual unable to perform the job.	Could be eligible under the category of “other health impaired.”	Permits qualification standard requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
PROCEDURAL SAFEGUARDS	Both require to the parent or guardian with respect to identification, evaluation, and placement.		Makes provisions for public notice, hearings, and awarding attorney fees.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
PROCEDURAL SAFEGUARDS CONT.		Notice provisions are much more comprehensive. Minimum requirements of the notice are specified.	Self-evaluations and transition plans are required and updated annually.
NOTICE AND CONSENT	Notice is required before a “significant change in placement.” Written consent would be considered a best practice	Written notice is required prior to any change in placement. Consent is required before the initial and reevaluation and placement.	
EVALUATIONS	<p>Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered a best practice.</p> <p>Requires periodic reevaluations.</p> <p>Reevaluation is required before a significant change in placement.</p>	<p>A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team. Consent is required before the initial evaluation is conducted.</p> <p>Requires reevaluations to be conducted at least every 3 years if determined appropriate by the team.</p> <p>A reevaluation is not required before a significant change in placement. However, most students covered by IDEA are also eligible under Section 504.</p>	All schools should conduct or update their Section 504 self-evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
EVALUATIONS CONT.	No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.	Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	
SERVICES	When interpreting evaluation data and making service decisions, both laws require districts to: *Draw upon information from a variety of sources. *Assure that all information is documented and considered. *The service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data and placement options. *Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment – LRE). *Requires notice and evaluation before any change of services.		
REVIEW OF PROGRAM	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually, or before any significant change.	
GRIEVANCE PROCEDURES	Requires districts to provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure. Complaint Procedures (SEA)	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
COMPLAINT PROCEDURES	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.	A formal complaint process is required. Parents can file a complaint with the state, a decision must be provided within 60 days.	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
DUE PROCESS	<p>Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings.</p> <p>Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Delineates specific requirements.</p>		<p>Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.</p>
MEDIATION	<p>Not required, however mediation should always be suggested.</p>	<p>Mediation is optional for the parents, and should always be suggested.</p>	<p>Not required, however mediation should always be suggested.</p>
EXHAUSTION	<p>Administrative hearing is not required prior to OCR involvement or court action.</p>	<p>The parent or guardian should exhaust all administrative hearings before seeking court action.</p>	<p>An administrative hearing is not required prior to OCR involvement or court action.</p>
ENFORCEMENT	<p>Enforced by the U.S. Office for Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education.</p>	<p>Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs.</p>	<p>Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.</p>

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
<p>DISCIPLINE OF STUDENTS WITH DISABILITIES</p>	<p>Requires that a school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a “significant change in placement.”</p> <p>Before implementing a suspension or expulsion that constitutes a significant change in the student’s placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability.</p> <p>If there is no relationship between the disability and the behavior, the school can expel the student. The school is not required to provide services and/or accommodations during the expulsion period.</p>	<p>Requires that a school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a “significant change in placement.”</p> <p>Before implementing a suspension or expulsion that constitutes a significant change in the student’s placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability.</p> <p>If there is no relationship between the disability and the behavior, the school can expel the student but still needs to provide a free appropriate public education. This means special education services outlined in the IEP.</p>	

AN EDUCATOR'S PRIMER

SECTION 504 FREQUENTLY ASKED QUESTIONS

The following questions are frequently asked regarding Section 504 issues of school relevance.

1. Are all schools required to adhere to Section 504?
Yes. All schools that receive any federal financial assistance must comply with Section 504 of the Rehabilitation Act of 1973.
2. Are schools required to have a Section 504 coordinator?
Yes. All schools must designate, in writing, a person who coordinates 504 services and protections.
3. Are children who are covered under IDEA always eligible for Section 504 protections?
Yes.
4. Are children who are covered under Section 504 always eligible for IDEA services?
No.
5. Are schools responsible for referring children suspected of being eligible for Section 504?
Yes.
6. Do schools have to evaluate children who are referred for Section 504?
No. If the school does not believe that the child is eligible, then an evaluation is not required. However, if this decision is made, the child's parents must be informed of their due process rights to appeal.
7. Do schools have to formally evaluate children?
Yes. Schools do have to evaluate children before determining their eligibility for services and before deciding which services are appropriate; however, unlike IDEA, which requires extensive testing, Section 504 includes teacher observations and other informal assessment data as appropriate assessment information.
8. Do schools have to develop an IEP on children who are 504 eligible only?
No. An IEP is not required; however, schools must develop an individual accommodation plan for the child.
9. Does a physician's diagnosis of ADD/ADHD automatically result in a child being eligible for Section 504?
No. A physician's diagnosis should be considered as one piece of documentation when evaluating the child. However, a physician's diagnosis alone does not automatically result in eligibility for Section 504.
10. Do schools have to reevaluate children who are receiving Section 504 services and protections?
Yes. Schools are required to periodically evaluate children. Unlike IDEA, which requires a reevaluation every 3 years, Section 504 does not specify a time period.

11. Must schools get permission from parents before getting children involved in Section 504 services?
No. Consent is not required; however, schools are required to inform parents before following procedures required under Section 504.
12. Do schools have to label a child with a clinical category before providing protections under Section 504?
No. Unlike IDEA, Section 504 does not require a specific label on a child before eligibility. Children never have to have a specific disability but only to have to meet the functional definition of disability as defined in Section 504.
13. Do children with disabilities have to be included in all school activities?
Yes. Children with disabilities must be given the opportunity to participate in all activities that the school makes available for other children. They cannot be denied participation because of a disability.
14. Do schools have to make all of their buildings accessible to children with disabilities?
No. Schools are required to make all programs accessible for children with disabilities, not all buildings.
15. What can parents do if they are dissatisfied with the way schools are serving children eligible for Section 504 protections?
Parents can file a complaint with the U.S. Office for Civil Rights, request an impartial due process hearing, or file suit in federal court.
16. Can children served under Section 504 receive related services, such as physical therapy?
Yes. Schools must provide related services to children who are eligible for services under Section 504. The only service that a child under Section 504, unlike under IDEA, may need is a related service.
17. Is there any extra federal funding for schools to use to provide appropriate services under Section 504?
No. There are no federal or state funds associated with serving Section 504 children.
18. Can children who are eligible for Section 504, but not IDEA, be served in special education classrooms?
Section 504 children can be served in special education classes if the classes are funded with state funds or local funds. They can be served in IDEA-funded classrooms as long as there is space available and their presence does not hinder IDEA-eligible children.
19. If a child can be served under either IDEA or Section 504, which should the school attempt to use to serve the child?
Schools receive federal funds to provide services under IDEA but do not receive any extra funding for Section 504 children. Therefore, if the school has a choice pertaining to how to serve a particular child, IDEA provides funding support.
20. Is Section 504 age-specific, like IDEA, which only deals with children through the age of 22?
No. Section 504 is a birth-to-death law. Children do not “age out” of Section 504 services and protections.

21. Can schools use any tests that they want when evaluation children for Section 504 services?
No. While Section 504 is not specific about how to evaluate children for services, it does require that schools obtain information from a variety of sources and requires that nondiscriminatory teaching methods be used when children are evaluated using test instruments.
22. Are eligibility guidelines for Section 504 specified?
No. The eligibility requirements for Section 504 are rather vague. Basically, a child is eligible for services and protections if the child has disability, as defined in the act. This means that a substantial limitation must occur in a basic life activity.
23. Where are most children who are eligible for Section 504 services placed?
Most children who are eligible for Section 504, but not IDEA, are primarily served in a general education classrooms.
24. Can children who are served under Section 504 be expelled from school?
Yes. However, expulsion is considered a major change of placement, and Section 504 requires an evaluation before any change of placement. The determination should also be made regarding the relationship of the appropriate behavior and the disability.

SECTION 504
EXAMPLES OF SCHOOL-RELATED BEHAVIORS OF MAJOR LIFE ACTIVITIES

MAJOR LIFE ACTIVITY	BEHAVIORS
Caring for oneself	<ul style="list-style-type: none"> ▪ inability to use bathroom facilities without supports, e.g., catheterization ▪ difficulty in changing into gym clothes without assistance
Performing manual tasks	<ul style="list-style-type: none"> ▪ inability to manipulate laboratory equipment for someone with cerebral palsy ▪ difficulties in learning keyboarding skills for someone with motor involvement resulting from a traumatic brain injury
Walking	<ul style="list-style-type: none"> ▪ inability to access the auditorium for drama class ▪ difficulty in using crutches
Seeing	<ul style="list-style-type: none"> ▪ inability to see overhead projector ▪ difficulty using in-class materials that are low contrast
Hearing	<ul style="list-style-type: none"> ▪ difficulty hearing speaker due to auditory and visual Distractions ▪ not seated in an advantageous location to capitalize on residual hearing
Speaking	<ul style="list-style-type: none"> ▪ inability to convey understandable messages ▪ problems interacting with others in social contexts
Breathing	<ul style="list-style-type: none"> ▪ physical reaction to various allergens ▪ difficulty breathing due to asthma
Working	<ul style="list-style-type: none"> ▪ emotional problems that interfere with vocational training ▪ problems with physical accessibility on training sites

B. SECTION 504 ACCOMMODATION PLAN CHECKLIST

Staff Member's Name: _____

NAME: _____ BEGINNING DATE: _____

DATE FOR REVIEW: _____

PHYSICAL ARRANGEMENT OF ROOM

- _____ Seating student near the teacher
- _____ Seating student near a positive role model
- _____ Standing near the student when giving directions or presenting lessons
- _____ Avoiding distracting stimuli (air conditioner, high traffic area, etc.)
- _____ Increasing distance between desks
- _____ Additional accommodations: _____

LESSON PRESENTATION

- _____ Pairing students to check work
- _____ Writing key points on the board
- _____ Providing peer tutoring
- _____ Providing visual aids, large print, films
- _____ Providing peer note taker
- _____ Making sure directions are understood
- _____ Including a variety activities during each lesson
- _____ Repeating directions to the student after they have been given to the class, then having him/her repeat and explain to teacher
- _____ Providing written outline
- _____ Allowing student to tape record lessons
- _____ Having child review key points orally
- _____ Teaching through multi-sensory modes, visual, auditory, kinesthetic
- _____ Using computer-assisted instruction
- _____ Accompanying oral directions with written directions for the child on the blackboard or on paper
- _____ Providing a model to help students; post the model and refer to it often
- _____ Providing cross tutoring
- _____ Assisting the student in finding the main idea, underlining, highlighting, using cue cards, etc.
- _____ Breaking longer presentations into shorter segments
- _____ Additional accommodations: _____

ASSIGNMENTS

- _____ Giving extra time to complete tasks
- _____ Simplifying complex directions
- _____ Reducing the reading level of the assignments
- _____ Requiring fewer correct responses to achieve a grade
- _____ Allowing student to tape record assignments/homework
- _____ Providing a structured routine in written form
- _____ Providing study skills training/learning strategies
- _____ Giving frequent short quizzes and avoiding long tests
- _____ Shortening assignments; breaking work into smaller segments
- _____ Allowing typewritten or computer printed assignments prepared by the student or dictated by the student and recorded by someone else
- _____ Using self-monitoring devices
- _____ Reducing homework assignments
- _____ Not grading handwriting
- _____ Not marking reversal of letters or transposition of numbers wrong; pointing them out for correction
- _____ Monitoring student's self-paced assignments on a timely basis
- _____ Recognizing and awarding credit for the student's class participation and oral contributions
- _____ Arranging that every homework assignment is accompanied by clear, concise written directions
- _____ Additional accommodations: _____

TEST TAKING

- _____ Allowing open book exams
- _____ Giving exam orally
- _____ Giving take home tests
- _____ Using more objective items (fewer essay responses)
- _____ Giving frequent short quizzes, not long exams
- _____ Allowing extra time for exam
- _____ Reading test items to student
- _____ Not placing student under pressure to complete a test in a given time

ORGANIZATION

- _____ Providing peer assistance with organizational skills
- _____ Assigning volunteer homework buddy
- _____ Allowing student to have an extra set of books at home
- _____ Sending home daily/weekly progress reports
- _____ Developing a reward system for in-school work and completion of homework
- _____ Providing student with a homework assignment notebook
- _____ Additional accommodations: _____

BEHAVIORS

- _____ Using timers to facilitate completion of tasks
- _____ Structuring "free" and transitional times, e.g., during recess, in a the hallway, lunchroom, locker room and library, during assemblies, on field trips, etc.
- _____ Keeping classroom rules simple and clear
- _____ Ignoring minor infractions

- _____ Making “prudent use” of negative consequences
- _____ Allowing for short breaks between assignments
- _____ Cueing student to stay on task through nonverbal signals
- _____ Marking student’s correct answers, not his/her mistakes
- _____ Implementing a classroom behavior management system
- _____ Allowing legitimate movement
- _____ Contacting with the student
- _____ Increasing the immediacy of rewards
- _____ Implementing time-out procedures
- _____ Additional accommodations: _____

MEDICATION

Name of physician: _____ Telephone: _____

Medication(s): _____ Schedule: _____

_____ Schedule: _____

Monitoring of medication(s): _____ Daily: _____ Weekly: _____ As Needed: _____

Staff member(s) responsible for administering medication: _____

Staff member(s) responsible for insuring that student self-medicates: _____

Staff member(s) responsible for documentation of administration of medication: _____

SPECIAL CONSIDERATIONS

- _____ Suggesting parent programs
- _____ Inservicing all school personnel involved with the child
- _____ Suggesting agency involvement
- _____ Providing group/individual counseling
- _____ Developing social skills through group experiences
- _____ Providing specific time limits for extra help outside of the classroom
- _____ Additional accommodations: _____

COMMENTS: _____

Case Manager's Name: _____

Teacher/Staff Member's Name: _____
